

James-Francis: Murphy,  
In Care of Postal Department 234277  
Encinitas, California 92023-4277  
Tel: 760-230-2868  
In Propria Persona

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
V.  
JAMES FRANCIS MURPHY,  
Defendant.

Case No. 08 CR 1196 W

MEMORANDUM OF POINTS AND  
AUTHORITIES FOR APPLICATION  
FOR ORDER TO SHOW CAUSE

Magistrate Judge Nita L. Stormes  
August 21, 2008 at 9:30am

James-Francis: Murphy, Real Party in  
Interest, Third Party Intervener,  
Authorized Representative, Man

QUESTIONS PRESENTED

1. Can plaintiff demonstrate why the laptop computer seized cannot be returned as the device itself has no probative value?
2. Can plaintiff demonstrate why the cellular telephone seized cannot be returned as the device itself has no probative value?
3. Can plaintiff demonstrate why original documents seized that validate the authenticity of documents in question should not be returned to Authorized Representative (AR)?

- 1 4. Can plaintiff explain how fundamental due process rights will not  
2 be violated since said documents are vital evidence for the  
3 defense and the Plaintiff actions have severely limited the  
4 ability to mount a defense in this action?
- 5 5. Can plaintiff demonstrate why AR cannot travel as he has  
6 demonstrated by past and current conduct that he is neither a  
7 flight risk nor a danger to the community?
- 8 6. Can plaintiff demonstrate why he should not restrain himself from  
9 interfering with personal property of AR?
- 10 7. Can plaintiff demonstrate and prove the compelling public  
11 interest as to why the AR liberty of travel is being restricted?
- 12 8. Can plaintiff demonstrate what exactly about the travel/status  
13 documents are incorrect?
- 14 9. Can plaintiff demonstrate what remedies a man, sovereign without  
15 subjects, is to do to obtain recognition in using his own travel  
16 documents?
- 17 10. Can plaintiff demonstrate why it is considered a crime to  
18 execute and apply what ALL the governmental foundational  
19 agreements are about, which is self-government in creating and  
20 using his own travel documents?
- 21 11. Can plaintiff demonstrate why the internationally  
22 recognized public document called an APOSTILLE, see Exhibit 5,  
23 cannot be used as a travel document?
- 24 12. Can plaintiff demonstrate why AR is listed as a United  
25 States citizen when in fact such citizenship was voluntarily  
26 renounced in May 2007 with the Act of State, see Exhibit 5?

1 13. Can plaintiff demonstrate how the living man, James-  
2 Francis: Murphy, Real Party in Interest, is the territory,  
3 property or possession of the United States or UNITED STATES OF  
4 AMERICA to which Statutes, Codes, Rules and Regulations apply?

5 14. Can plaintiff demonstrate why this instant case is  
6 occurring in the United States District Court which, according to  
7 **Balzac v. Porto Rico, 258 U.S. 312(1922)**, "The United States  
8 District Court is not a true United States Court established  
9 under Article III of the Constitution to administer the judicial  
10 power of the United States therein conveyed. It is created by  
11 virtue of the sovereign congressional faculty, granted under  
12 Article IV, Sec. 3, of that instrument, of making all needful  
13 rules and regulations respecting the territory belonging to the  
14 United States." and The United States District Court is "a mere  
15 territorial court" and **COCHRAN et. al. v. ST. PAUL & TACHOMA**  
16 **LUMBER CO. 73 Fed. Supp 288 (1947)**, which states, "A United  
17 States District Court is purely a creature of legislative branch  
18 of government, generally provided for by Constitution, but not a  
19 constitutional court in stricter sense, and its jurisdiction  
20 comes from Congress."?

21 15. Can plaintiff demonstrate how Senate Ethics Committee Rule  
22 54 applies to AR who functions from the county (not the  
23 County/COUNTY) as declared in his Act of State which is foreign  
24 to the United States and UNITED STATES OF AMERICA?

25 16. Can plaintiff demonstrate how AR is suable when **ALDINGER**  
26 **v. HOWARD, TREASURER OF SPOKANE COUNTY, ET AL 427 U.S. 1(1976)**

1 "the county is not suable as a "person" Civil Rights Act of  
2 1871, 42 U.S.C. 1983 for purposes of asserting a state-law claim  
3 not within federal jurisdiction, is without the District Court's  
4 statutory jurisdiction.

5 17. Can plaintiff demonstrate how the counties are not  
6 excluded from the "person[s]" answerable to the [427 U.S. 1, 2]  
7 plaintiff "in an action at law [or] suit in equity" to redress  
8 the enumerated deprivations?

9 18. Can plaintiff demonstrate why AR is not competent  
10 authority as a Sovereign State-in-fact to create and issue his  
11 own house a "passport" in the nature of said definition or to  
12 obtain one from a neutral source according to the Immigration and  
13 Naturalization Act of June 27, A.D. 1952, 66 Statutes at Large  
14 Public Law 414 wherein in that Act, it states in Title I,  
15 Section 1, Definitions, "(30) The term 'passport' means any  
16 travel document issued by competent authority showing the  
17 bearer's origin, identity, and nationality if any, which is valid  
18 for the entry of the bearer into a foreign country."?

19 19. Can plaintiff demonstrate why plaintiff should not admit  
20 the acts in question did not occur on property/land owned and  
21 controlled by the plaintiff?

22 20. Can plaintiff demonstrate why the Grand Jury (GJ)  
23 transcript (copy) relevant to the defendant's guilt or innocence  
24 of the alleged crimes should not be turned over?

25 21. Can plaintiff demonstrate why not turning over the GJ  
26 transcript relevant to the defendant's guilt or innocence of the

1       alleged crimes would not deprive the defendant of the  
2       constitutional protected right of effective assistance of counsel  
3       and the right to be prepared for cross-examination of accusing  
4       witnesses?

5       22.       Can plaintiff demonstrate why plaintiff should not admit  
6       that named defendant, JAMES FRANCIS MURPHY, does not exist in  
7       records of STATE OF CALIFORNIA as a Limited Liability Company,  
8       Limited Liability Partnership, Limited Partnership, General  
9       Partnership, alpha scroll, Sole Partnership , Unincorporated  
10      Business Organization, or Corporation, or any other entity  
11      therein?

12      23.       Can plaintiff demonstrate why plaintiff should not admit  
13      that in relation to entity known as JAMES FRANCIS MURPHY, named  
14      defendant, that United States Attorney General in his capacity as  
15      alien property custodian pursuant to 50 USC Appx 12, among other  
16      statutes and codes, is not the former trustee of said former  
17      entity JAMES FRANCIS MURPHY?

18      24.       Can plaintiff demonstrate why Assistant United States  
19      Attorney Fred Sheppard should not admit that he is an agent of a  
20      foreign principle due to his relationship as member of California  
21      State Bar #250781 since October 2007 therein being in a  
22      subsidiary/legal relationship with the International Bar  
23      Association domiciled in the United Kingdom in accordance with 22  
24      USC 611 and Bar Treaty of 1947?

1 25. Can the plaintiff, UNITED STATES OF AMERICA, demonstrate  
2 why it should not testify in open court in this matter as to  
3 injuries sustained?

4 STATEMENT OF THE ISSUES

5 26. Plaintiff contends that identification documents used by AR  
6 that are labeled as "Diplomat/Ambassador" are illegal and  
7 violates statutory law.

8 27. Plaintiff contends that AR allegedly stated or implied that  
9 he was a law enforcement officer.

10 28. Plaintiff alleged that AR was carrying an illegal powder  
11 substance when attempting to pass through the TSA checkpoint.

12 29. Plaintiff contends that AR is both a danger to the  
13 community and a flight risk.

14 30. Plaintiff contends that AR is insane and should be  
15 subjected to psychological evaluation because he believes that  
16 the U.S. Congress is correct in accordance with P.L. 97-280 and  
17 that the Bible is the foundational law form upon which the  
18 county, State and United States were founded.

19 31. Plaintiff contends that AR is required to operate within  
20 Admiralty/Maritime law by forcing him to obtain a State of  
21 California identification card that requires participation in an  
22 admiralty based, covered employment program called Social  
23 Security, which is wholly voluntary.

24 32. Plaintiff contends he at liberty to take property belonging  
25 to AR and not return it even though it has no probative value to  
26 plaintiff case.

## STATEMENT OF THE FACTS

33. AR does his best to operate within the confines of the teaching and instruction of YHWH (Ex 3:15, 15:3) (Torah) as directed by the Catholic Church's religious fundamentals which are his convictions protected by the First Amendment to the Constitution for the United States of America (A.D. 1791).

34. It came to the attention of AR that the Social Security program is an Admiralty/Maritime covered employment agreement (Law of the Sea, Revelation) and separate and apart from the Torah.

35. In the nature of that religious practice demonstrated by the case of Stevens v. Berger, 428 F. Supp. 896 (1977), AR believes quite similarly. Therein, plaintiff must overcome a very high standard of religious intolerance and demonstrate a compelling public interest before plaintiff can intrude on the private affairs operating with private travel identification documents that are based upon one's closely held religious convictions.

## DISCUSSION 1

**PLAINTIFF CANNOT TAKE AND KEEP PROPERTY THAT HAS NO PROBATIVE VALUE**

36. The notions of "fair play and substantial justice" as well as "good faith" in any relation require plaintiff to perform the duties agreed upon in the State and Federal Constitutional agreements.

37. The United States Constitution states in Article 1 section 10, "no state . . . shall impair the obligation of contract."

1 38. The California State Constitution has similar provisions.

2 39. A laptop computer and a cellular telephone, notwithstanding the  
3 data held said instruments, are not in and of themselves of any  
4 value to plaintiff's case.

5 40. If plaintiff is not capable or competent to copy data allegedly  
6 required to prosecute plaintiff's case then AR must question the  
7 mental sanity and legal capabilities of agents of plaintiff.

8 41. AR is being hampered from performing his duties in husbandry in  
9 providing for his family in that data for billing is kept on his  
10 cellular telephone kept by plaintiff.

11 42. AR is being hampered from performing his duties in husbandry in  
12 providing for his family in that data for medical services and  
13 diagnostics are being kept from him held on his laptop computer  
14 kept by plaintiff.

15 DISCUSSION 2

16 **PLAINTIFF CANNOT OVERRULE DECLARATIONS MADE BY THE**

17 **SECRETARY OF STATE OF THE STATE OF CALIFORNIA**

18 43. The notions of "fair play and substantial justice" as well as  
19 "good faith" in any relation require plaintiff to perform the  
20 duties agreed upon in the agreement between AR and State of  
21 California Secretary of State.

22 44. When a man sends documents to the secretary of state and they  
23 agree by stamping and sealing those documents it forms an agreement  
24 between the parties.

25 45. A precedent of government contracting in this method is  
26 demonstrated by the case of Dartmouth College v. Woodward, 17 U.S.



1 18 (1819), wherein [page 10, 1819 Lexis 330] "An act of the State  
2 legislature of New Hampshire, altering the charter, without the  
3 consent of the corporation, in a material respect, is an act  
4 impairing the obligation of the charter, and is unconstitutional  
5 and void." and [page 57, 1819 Lexis 330] "In my judgment it is  
6 perfectly clear, that any act of a legislature which takes away any  
7 powers or franchises vested by its charter in a private corporation  
8 or its corporate officers, or which retrains or controls the  
9 legitimate exercise of them, or transfers them to other persons,  
10 without its assent, is a violation of the obligations of that  
11 charter. If the legislature meant to claim such an authority, it  
12 must be reserved in the grant." Further, New York v. United States,  
13 505 U.S. 144, also supports this premise, [page 33, last paragraph,  
14 1993 U.S. Lexis 3693] "The answer follows from an understanding of  
15 the fundamental purpose of our Government's federal structure. The  
16 Constitution does not protect the sovereignty of States for the  
17 benefit of the States or state governments as abstract political  
18 entities, or even for the benefit of the public officials governing  
19 the States. To the contrary, the Constitution divides authority  
20 between federal and state governments for the protection of  
21 individuals."

22 46. Bouvier's maxims of law state, "Consensus facit legem. Consent  
23 makes the law. A contract is a law between the parties, which can  
24 acquire force only by consent."

1 47. Bouvier's maxims of law state, "Contractus legem ex conventione  
2 accipiunt. The agreement of the parties makes the law of the  
3 contract. Dig. 16, 3, 1, 6."

4 48. Bouvier's maxims of law state, "Conventio vincit legem. The  
5 agreement of the parties overcomes or prevails against the law.  
6 Story, Ag. See Dig. 16, 3, 1, 6."

7 49. Bouvier's maxims of law state, "Le contrat fait la loi. The  
8 contract makes the law."

9 50. Bouvier's maxims of law state, "Qui destruit medium, destruit  
10 finem. He who destroys the means, destroys the end. 11 Co. 51;  
11 Shep. To. 342."

12 51. AR sent documents for approval by the State of California  
13 Secretary of State, known as Apostille. Secretary of State did  
14 agree to the validity of said documents by sealing and stamping  
15 said documents and allowing in excess of 30 days passing. Therein,  
16 laches applied.

17 52. Therein, the law used by AR in support of his deeply held  
18 religious convictions overcame and remedied the failure of the  
19 State of California Department of Motor Vehicles/Cal Trans to issue  
20 identification documents in line with said religious beliefs.

21 53. Therein, State of California and therein the federal government  
22 (Dyett v. Turner, 439 P2d 266 (1968)), created an impossibility in  
23 law unless self government applies which AR implemented with State  
24 of California Secretary of State assented.  
25  
26

## DISCUSSION 3

**PLAINTIFF CANNOT FORCE AR INTO ANOTHER RELIGION**

54. The notions of "fair play and substantial justice" as well as "good faith" in any relation require plaintiff to perform the duties set forth in the State and U.S. Constitutions therein restricting plaintiff from violating unalienable Rights protected therein, specifically those protected by the First Amendment.

55. AR views participation in the Social Security program as that of paganism which is treason in the Republic.

56. The foundational law form upon the Republic was founded is the Bible, as demonstrated by P.L. 97-280, the Declaration of Independence 1776, the Treaty of Peace 1783, the Articles of Confederation, the Constitution for the United States of America 1787, Bill of Rights 1791, and the California State Constitution of 1849.

"We, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution."

57. The Secular courts operate on a basis of secular law. Said secular law is separate and apart from Torah with few exceptions. It is said that "behind everyone's law form is someone's religion." Secular law is no different. According to the United States Supreme Court, "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are . . . Secular Humanism." *Torcaso v. Watkins*, 367 U.S. 488 (1961).

1 58. Law of the Sea is admiralty/maritime. The Supreme Court has ruled  
2 that all contracts with government, express or implied, are  
3 maritime in their nature, The Glide, 167 U.S. 606; and The Corsair,  
4 145 U.S. 342, and therefore of admiralty jurisdiction, American  
5 Ins. Co. v. Canter (1828) 1 U.S. (Pet.) 511, 545; whereas "A case  
6 in admiralty does not, in fact, arise under the Constitution or  
7 Laws of the United States." Law of the Sea is reflected in the Book  
8 of Revelation (P.L. 97-280) as that of paganism and anti-Torah.  
9 59. The Social Security program is an agreement with government,  
10 covered (limited liability) employment and therein of admiralty  
11 jurisdiction.  
12 60. Therein, both the plaintiff and State of California are  
13 attempting to force AR into a Law of the Sea relation and therein  
14 Secular Humanism.

15 DISCUSSION 4

16 **PLAINTIFF CANNOT DEMONSTRATE AR IS A DANGER**

17 **TO THE COMMUNITY OR FLIGHT RISK**

18 61. The notions of "fair play and substantial justice" as well as  
19 "good faith" in any relation require fair play and equity to ensure  
20 proper relations.  
21 62. Neither plaintiff nor this court has ever demonstrated that AR is  
22 a danger to the community.  
23 63. Neither plaintiff nor this court has ever demonstrated that AR is  
24 a flight risk.  
25 64. Therein, AR unalienable right to travel is being unnecessarily  
26 restricted.

1 65. Therein, AR unalienable right to work is being restricted at a  
2 loss to his duty to produce for his family in engaging husbandry  
3 and his medical profession of osteology.

4 66. Therein, AR and his family suffers damage during this pretrial  
5 phase.

6 67. AR is already hosting the indignity of a global positioning  
7 system (GPS) device that is both a burden and an indecent intrusion  
8 into his private life.

9 68. Neither plaintiff nor this court has demonstrated that AR is  
10 public property and therein using a GPS device with restrictions of  
11 travel and curfew are absurd restrictions.

12 69. AR respectfully requests this court at the very least remove the  
13 GPS ankle bracelet as it hampers movement, is unnecessary in the  
14 interests of justice and acts as pretrial confine of a man that is  
15 presumed innocent until proven guilty.

16 DISCUSSION 5

17 **PLAINTIFF CANNOT DEMONSTRATE THAT AR WAS**

18 **ATTEMPTING TO POSE AS A LAW ENFORCEMENT OFFICER**

19 70. The notions of "fair play and substantial justice" as well as  
20 "good faith" in any relation require disclosure of certain material  
21 facts to ensure proper relations.

22 71. In the case at bar AR presented identification documents and a  
23 Diplomat/Ambassador badge that clearly states for all to see  
24 Diplomat/Ambassador. AR repeatedly stated that he was an ambassador  
25 of Christ in line with his deeply held religious convictions.

72. In accordance with Stevens, supra, "Neither trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive literature or history is required to meet the test of beliefs cognizable under Constitution as religious, and one person's religious beliefs held for one day are presumptively entitled to the same protection as views of millions which have been shared for thousands of years." Further, "Religious belief can appear preposterous to every other member of human race yet merit protections of the Bill of Rights. U.S.C.A.Const. Amend 1." Also, Once bona fide First Amendment issue is joined, burden must be shouldered by government to defend a regulation with impact on religious actions is a heavy one, and basic standards is that a compelling state interest must be demonstrated." "The basic standard was set out for freedom of religion cases by the Supreme Court in Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963)." "There is no case law determining whether the state and federal governments can meet the compelling state interest test so far as the use of social security numbers is concerned. Analogous cases indicate that they cannot." The state and federal government and their agencies must apply the "least drastic means doctrine" wherein an individual asserts his first amendment rights to NOT participate in any benefits program. Therein is the problem in this case at bar. AR attempted to create his own identification documents and therein notify the State of California Secretary of State to obtain tacit procurement approval by assent through the apostil process. Thereafter, AR employed

1 remedies available via P.L. 414 as he and the Secretary of State  
2 represent Sovereign authorizes, wherein the Secretary of State acts  
3 as agent for State of California and AR presents himself as a  
4 Sovereign in line with Brisendine.

5 "... in People v. Brisendine (1975) 13 Cal.3d 528 , 549-550 [119  
6 Cal.Rptr. 315, 531 P.2d 1099], "the incontrovertible conclusion  
7 that the California Constitution is, and always has been, a  
8 document of independent force," our court explained that "[i]t is  
9 a fiction too long accepted that provisions in state  
10 constitutions textually identical to the Bill of Rights were  
11 intended to mirror their federal counterpart. The lesson of  
12 history is otherwise: the Bill of Rights was based upon the  
13 corresponding provisions of the first state constitutions, rather  
14 than the reverse .... The federal Constitution was designed to  
15 guard the states as sovereignties against potential abuses of  
16 centralized government; state charters, however, were conceived  
17 as the first and at one time the only line of protection of the  
18 individual against the excesses of local officials." Accordingly,  
19 we affirmed in Brisendine that state courts, in interpreting  
20 constitutional guarantees contained in state constitutions, are  
21 "independently responsible for safeguarding the rights of their  
22 citizens." (Italics added.) (Id. at p. 551.) fn. 4 Committee to  
23 Defend Reproductive Rights v. Myers, 29 Cal.3d 252  
24

25 73. AR is a Sovereign authority over himself and his household in  
26 accord with Exodus 34 and the county that obtains its authority  
27 from Exodus 18:21, 25, and Deuteronomy 1:15; "to be rulers of  
28 thousands, and rulers of hundreds, rulers of fifties, and rulers of  
29 tens:" Therein, The county has been in existence since Moses.

30 74. On the other hand, those institutions owned, controlled and  
31 created through the various STATE and FEDERAL constitutions are  
32 creations of man and therein can only control those entities  
33 created through that charter. AR is not one of them as demonstrated  
34 by **Aldinger**, supra, "the county is not suable as a 'person' Civil  
35 Rights Act of 1871, 42 U.S.C. 1983 for purposes of asserting a

1 state-law claim not within federal jurisdiction, is without the  
2 District Court's statutory jurisdiction."

3 75. It is not the secular legal responsibility of AR to teach  
4 plaintiff the law (Biblical) but it is his duty pursuant to 2  
5 Corinthians 5:20, "Now then we are ambassadors for Christ . . ."

6 76. This duty as an Ambassador for Christ creates the issue wherein  
7 the badge that plaintiff alleges was used to imply or claim law  
8 enforcement status was in fact demonstrated both at the San Diego  
9 Airport and during questioning by detectives where AR clearly and  
10 repeatedly stated and disclosed that he was an ambassador for  
11 Christ. The copy of the original Certified Apostille of the Act of  
12 State document presented to everyone at the San Diego Airport  
13 evidences by clearly stating that AR is an ambassador/diplomat for  
14 Christ and none other, see Exhibit 5, included as if fully set  
15 forth.

16 77. Plaintiff/government may think AR quite insane, but a "Religious  
17 belief can appear preposterous to every other member of human race  
18 yet merit protections of the Bill of Rights. U.S.C.A.Const. Amend  
19 1." Stevens v. Berger, 428 F. Supp. 896 (1977)

20 78. Neither TSA Agents nor any representative of plaintiff can claim  
21 that AR did not exercise his rights of self government, or of free  
22 religious conviction in exercising his rights protected by the  
23 first amendment.

24 79. At no time did AR EVER claim he represented a law enforcement  
25 agency. And, it is a principle of law that anyone can swing his  
26 arms so long as they do not impact or threaten impact upon another.



1 Similarly AR can exercise his legal rights in the same fashion  
2 without damaging other parties.  
3  
4

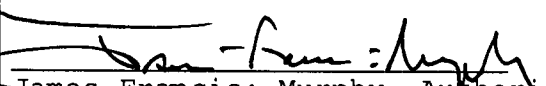
5 CONCLUSION

6 80. It would offend the notions of fair play and substantial justice  
7 to assert that plaintiff could engage in malicious institution of  
8 Criminal proceedings.

9 81. Although the plaintiff may stretch his authority to create a  
10 controversy with prima facie data, there clearly is no injured  
11 party, and no regulatory infraction worth charging. If these false  
12 and malicious charges are brought to trial, AR firmly believes  
13 that he will be successful in demonstrating at a minimum to any  
14 jury that there does not exist a mens rea component to meet  
15 plaintiff's premise and the charges will fail in the predicate.  
16 Furthermore, based upon the discussions above there does not even  
17 appear to exist a regulatory infraction and it does appear that  
18 State of California in concert with plaintiff created what could be  
19 construed as an impossibility in law regarding identification  
20 documents that are in line with AR's religious beliefs and those of  
21 the Republic.

22 82. For the above stated reasons, the court should dismiss this case  
23 for lack of mens rea and lack of a damaged party.  
24  
25  
26  
27  
28  
29

1 RESPECTFULLY SUBMITTED this 15<sup>th</sup> August, 2008.

2  
3  
4   
5 ~~James Francis: Murphy~~, Authorized Representative

6 In Care of Postal Department 234277

7 Encinitas, California 92023-4277

8 Tel: 760-230-2868

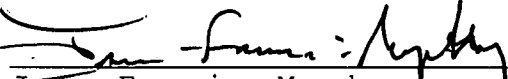
9 In Propria Persona

10

1 CERTIFICATE OF SERVICE

2  
3 COPY of the forgoing hand delivered,  
4 This 15<sup>th</sup> day of August, 2008, to:  
5 U. S. Assistant Attorney Fred Sheppard  
6 880 Front Street Room 6293  
7 San Diego, CA  
8 619-557-5610  
9

10  
11  
12 Service performed by:

13   
14

15 James-Francis: Murphy  
16 In Care of Postal Department 234277  
17 Encinitas, California 92023-4277  
18 Tel: 760-230-2868